

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
Asheville Division
Case No. 1:12-cv-388

WILLIAM N. DEVLIN and wife CARRI A.
LUCKSAVAGE,

Plaintiffs

v.

WELLS FARGO BANK, N.A.

Defendant.

MOTION TO DISMISS
AMENDED COMPLAINT

Defendant Wells Fargo Bank, National Association (“Wells Fargo”) proceeding by and through undersigned counsel, moves pursuant to Rules 9 and 12(b)(6) of the Federal Rules of Civil Procedure and Local Rule 7.1 for entry of an Order dismissing Plaintiffs’ Complaint and Amendment to Complaint with prejudice. As detailed in the Brief submitted contemporaneously with this Motion, Defendant respectfully submits that the Complaint should be dismissed because:

1. The claims are barred by the applicable statutes of limitations;
2. The claims are premised on the breach of a legal duty that does not exist – to wit: that a bank has a duty to determine whether a loan is a good deal for its borrower;
3. Plaintiffs have failed to plead the alleged fraud and unfair or deceptive trade practices with the required particularity, to allege reasonable reliance, or even to allege a misstatement of past or present fact to support their claims;
4. Plaintiffs have failed to identify a breach of any contract upon which to base their breach of the duty of good faith and fair dealing claim;

5. Plaintiffs have no standing to attempt to enforce the “National Mortgage Settlement” and cannot show a likelihood of success on the merits of any of their claims; and
6. All of the claims are premised on implausible inferences.

WHEREFORE, Wells Fargo respectfully requests that the Court enter an Order dismissing Plaintiffs’ claims with prejudice and granting Wells Fargo such additional relief as the Court deems just and proper.

This the 30th day of August, 2013.

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

/s/ Kenneth B. Oettinger, Jr.

Kenneth B. Oettinger, Jr. (NC State Bar No. 20064)

Lee Williams (NC State Bar No. 35657)

301 South College Street, Suite 3500

Charlotte, NC 28202-6037

Telephone: (704) 331-4900

Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of August, 2013, the foregoing “**Motion to Dismiss the Amended Complaint**” was served via the Court’s CM/ECF system as follows:

David R. Payne
David R. Payne, P.A.
1 North Pack Square, Suite 500
Asheville, NC 28801
dpayne@drplawfirm.com

Attorney for Plaintiffs

/s/ Kenneth B. Oettinger, Jr. _____
Kenneth B. Oettinger, Jr.